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**[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE § 6103]**

Attorneys for Defendants
CITY OF PALOS VERDES ESTATES and
CHIEF OF POLICE JEFF KEPLEY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA; WESTERN DIVISION**

CORY SPENCER, an individual;
DIANA MILENA REED, an
individual; and COASTAL
PROTECTION RANGERS,
INC., a California non-profit
public benefit corporation,

Plaintiffs,

v.

LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF
THE LUNADA BAY BOYS,
including but not limited to
SANG LEE, BRANT
BLAKEMAN, ALAN
JOHNSTON aka JALIAN
JOHNSTON, MICHAEL RAE
PAPAYANS, ANGELO
FERRARA, FRANK FERRARA,
CHARLIE FERRARA and N.F.;
CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE
JEFF KEPLEY, in his
representative capacity; and
DOES 1-10,

Defendants.

Case No. 2:16-cv-02129-SJO-RAO

Assigned to District Judge:
Hon. S. James Otero; Courtroom: 10C
@ 350 W. First Street, L.A., CA 90012

Assigned Discovery:
Magistrate Judge: Hon. Rozella A. Oliver

**[Exempt From Filing Fees Pursuant To
Government Code § 6103]**

**DECLARATION OF HOWARD A.
LIBERMAN IN SUPPORT OF CITY OF
PALOS VERDES ESTATES AND CHIEF
OF POLICE JEFF KEPLEY'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR ADMINISTRATIVE
RELIEF PURSUANT TO FED. RULES
OF CIVIL PROCEDURE 56(d)**

[Filed concurrently with Opposition and
Declarations of Christopher Glos and Jacob
Song]

Date: September 5, 2017
Time: 10:00 a.m.
Ctm.: 10C; Hon. S. JAMES OTERO

Complaint Filed: March 29, 2016
Trial: November 7, 2017

DECLARATION OF HOWARD A. LIBERMAN

I, Howard A. Liberman, declare as follows:

1. I am a Senior Associate attorney with the law firm Mastagni Holstedt, APC, counsel for the Palos Verdes Estates Police Officers' Association ("PVE POA"). I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would competently testify to such facts under oath.

2. The PVE POA is an incorporated non-profit organization dedicated to approximately 35 sworn police officers and non-sworn police employees serving the City of Palos Verdes Estates. The PVE POA provides benefits to its members, including legal defense. In addition, the PVE POA and its members, along with help from the community, work to provide assistance to many charitable groups within and around the City of Palos Verdes Estates including but not limited to, the Palos Verdes Estates Community Assistance and Resources for the Elderly and Seniors (PVE CARES) and Miracles for Kids.

3. Based upon information and belief, in August 2016, the PVE POA member police officers were requested, by the City of Palos Verdes Estates, Chief of Police Jeff Kepley, to give access and permission to preserve and image their personal electronic devices in connection with the litigation in *Spencer v. Lunada Bay Boys*, United States District Court, Case No. 2:16-cv-02129-SJO-RAO (the "Lawsuit").

4. The Police Officers Research Association of California ("PORAC") Legal Defense Fund approved my law firm to represent the PVE POA members with respect to the requested access and permission to preserve and image data maintained on personal electronic devices.

5. On or about August 28, 2016, the PVE POA objected to Chief Kepley's request and a meeting was held at the City on or about August 30, 2016 between Chief Kepley, counsel representing the City, the PVE POA members, and

1 myself. Following the meeting the PVE POA continued to object to the request to
2 provide access and permission to preserve and image data on any PVE POA
3 member's personal electronic device. For approximately the next 30 days, the City
4 and PVE POA continued to meet and confer over the request. An agreement could
5 not be reached because the PVE POA concluded that the request violated the
6 privacy rights of the PVE POA members in that no member had been named party
7 to the lawsuit and the request an overbroad, unsupported fishing expedition into the
8 private cell phone data on police officer personal electronic devices.

9 6. On or about December 28, 2016, I caused a letter to be sent to the
10 City's counsel in the Lawsuit by Kenneth E. Bacon of my office stating that the
11 PVE POA's objected to the request. A true and correct copy of the letter sent to the
12 City's counsel in the Lawsuit is attached hereto as Exhibit "A". The December
13 2016 letter sets forth the objections to the City compelling the police officers to
14 produce their ESI on personal phones.

15 7. In addition to the grounds explicitly set forth in the December 28, 2016
16 letter, any effort by the City to compel production of the police officers' personal
17 phone ESI is a breach of the parties' collective bargaining agreement because it
18 would constitute a unilateral change to the working conditions of officers by
19 allowing the City access to private/personal phone ESI without a warrant or court
20 order.

21 8. Based upon information and belief, no Palos Verdes Estates Police
22 Officer has ever been served with a subpoena duces tecum for any documents,
23 materials, or records in the Lawsuit, much less for the production of their personal
24 cell phone data.

25 9. Based upon information and belief, the City produced a copy of my
26 law firm's December 28, 2016 letter to the Plaintiffs' counsel in response to written
27 discovery about their request for data on personal electronic devices. I have never
28 received any communication from Plaintiffs' counsel about this matter and, based

1 upon information and belief, no one in my law firm has received any
2 communication from Plaintiffs' counsel about this matter.

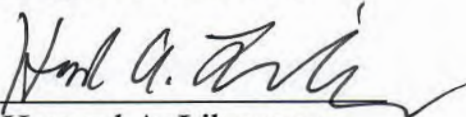
3 10. Based upon information and belief, Kenneth Bacon, a senior associate
4 in my office, telephonically appeared on July 25, 2017 with counsel for the City to
5 address Plaintiffs' last-minute notice to address certain objections at Sergeant
6 Barber's deposition regarding his personal cell phone. The Magistrate, unable to
7 address Plaintiffs' issue, instructed Plaintiff to meet and confer with the PVE POA
8 and City to schedule a call on the issue during the week of July 31 to August 4.
9 Plaintiffs never contacted my office or followed up to schedule a time to address
10 the matter with the Magistrate Judge.

11 11. It has come to my understanding that Plaintiffs, by way of their Motion
12 for Administrative Relief, are attempting an end run around the PVE POA's
13 objections by seeking to compel the City to force the police officers to produce data
14 on their personal electronic devices.

15 12. The PVE POA continues to object to the production of any data on any
16 Palos Verdes Estates police officer's personal electronic device. If this Court
17 determines that such data should be produced, the PVE POA requests an
18 opportunity to formally brief the Court on the matter in order to protect the privacy
19 rights of its member.

20 I declare under penalty of perjury under the laws of the United States of
21 America that the foregoing is true and correct to the best of my knowledge.

22 Executed this 14th day of August 2017 at Los Angeles, California.

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24 Howard A. Liberman
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